SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. ....., Original.

IN RE COMMONWEALTH OF MASSACHUSETTS, PETITIONER.

Motion for Leave to File Petition for Writ of Prohibition, etc.

We have considered the brief of Attorney General Parker, filed in support of the *ex parte* motion.

From paragraph 5, found on page 28, it is evident that Attorney General Parker is not satisfied with the brief which he has filed, for he suggests that this motion ought "not to be determined against Massachusetts upon this summary brief, but may be fully and adequately argued" on the petition, should leave to file it be granted by the court. We are not in a position to accept or controvert the statement of the brief that "the principle upon which our petition rests we believe to be one of the most important to the dignity of Massachusetts that our Commonwealth has ever asserted before any tribunal."

Whether this be so or not, we are quite certain that the "dignity of Massachusetts" is no more an object of solicitude

to this court than the legal rights, honor, and professional standing of our client in the premises.

We are fully aware that whether or not this motion shall be granted rests largely in the discretion of the court, which would hesitate to debar the Attorney General, by summarily denying the motion, from an opportunity of fully presenting the reasons why the petition should be granted. We are equally of the belief that the suggestions as to the lack of jurisdiction of the supreme court of the District are unsound, and upon argument will be found to be wholly untenable. Both in the petition and in the brief will be found many *ex parte* statements entirely at variance with the facts, and which we trust we shall be able, if opportunity is afforded us, to show the court are not true.

By not entering into an argument upon the motion or a discussion of Attorney General Parker's brief, we do not wish to be understood that we assent to his position either as to the law or the facts. On the contrary, we emphatically deny both his law and his facts. Neither do we wish to suggest any conclusion to which the court ought to come upon the proceeding as it now stands. If the court should be of the opinion that the State should be granted leave to file its petition, we simply desire to be given leave to present to the court, on the hearing of the petition, our reasons for objecting to the issuing of the writ.

Respectfully submitted.

FREDERIC D. MCKENNEY,
WM. FRYE WHITE,
J. S. FLANNERY,
Attorneys for John B. Cotton.